International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 788 (Martin Marietta Aerospace Corporation) *and* Jill Trolz *and* Michael J. Kushi *and* Tanya L. Gray. Cases 12–CB–3162–1, 12–CB–3162–2, and 12–CB–3182

April 4, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 27, 1989, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the recommended Order as modified.

The judge found, and we agree, that the Respondent violated Section 8(b)(1)(A) of the Act by continuing to collect membership dues deducted from the wages of eight employees after they had effectively resigned union membership pursuant to their authorizations to the Employer. The authorizations provided that:

> In accordance with my rights under the National Labor Relations Act, and the laws of Florida I authorize the UAW (AFL–CIO) to serve as my collective bargaining representative and apply for membership.
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> I authorize the Martin Marietta Company to deduct from my wages dues to the UAW and its Local No. 788 in the sum of $3.00 a month (or in the amount fixed by the convention of the UAW), and my initiation fee, and remit them to the Financial Secretary of the Local Union. This authorization to the Company shall continue until the termination date of the applicable collective agreement or until one year from this date, whichever is sooner, and it shall automatically renew for successive periods of one year or for the period of each succeeding agreement, whichever period is shorter, unless I give written contrary notice to the Company and the Union by registered mail, return receipt requested, not more than 30 days and not less than 15 days prior to the expiration of such successive period.
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> Dues and initiation fee deductions will not begin until sixty (60) days after my date of employment.

The judge based his conclusion that the dues authorizations terminated on resignation from the Union on *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635 (1984). The Board in *Eagle Signal* stated that:

> [A] resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself. [Footnote omitted.] [268 NLRB at 637.]

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,[1] the Board acknowledged judicial criticism of the *Eagle Signal* analysis[2] and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue dues deductions pursuant to a checkoff authorization that remains effective even after that employee resigns from union membership. In fashioning a test to determine whether an employee has agreed to do that, the Board recognized the fundamental policies of the Act guaranteeing employees the right to refrain from belonging to or assisting a union, as well as the principle set forth by the Supreme Court that waiver of those statutory rights must be clear and unmistakable.[3] To give full effect to these fundamental labor policies, the Board stated that it would

> construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement–-as pertaining only to the *method* by which dues payments will be effected *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. If an authorization contains such language, dues may properly continue to be deducted from the employee's earnings and turned over to the union during the entire agreed-upon period of irrevocability, even if the employee states he or she has

[1] 302 NLRB 322 (1991).

[2] See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

[3] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

had a change of heart and wants to revoke the authorization. [*Lockheed*, supra at 328–329.][4]

Applying the *Lockheed* analysis to the facts of this case, we find that the dues-checkoff authorizations the eight employees signed did not contain explicit language within the checkoff authorization clearly obligating employees to pay dues following resignation. The employees only ''clearly'' agreed to allow certain sums to be deducted from their wages and remitted to the Respondent for payment of their ''initiation fee(s)'' and monthly dues. They did not clearly agree to have deductions made even after they had resigned from union membership. Therefore, the partial wage assignments made by Jill Trolz, Dorothy Anderson, Lois Burks, Pamela R. England, Tanya L. Gray, Phyllis Johnson, Michael J. Kushi, and Cassandra S. Stevens were conditioned on their union membership and were revoked when they ceased being union members. By receiving, accepting, and retaining membership dues deducted from the wages of these employees after their resignations from union membership, where the terms of the voluntarily executed checkoff authorizations did not clearly and explicitly impose any postresignation dues obligation on the employees, the Respondent has restrained and coerced these employees in the exercise of their Section 7 rights and has violated Section 8(b)(1)(A) of the Act.

With respect to Section 8(b)(2), the Board in *Lockheed*, supra, stated that, where no specific causal connection is established between the this continued transmission of dues to the Union and some action by the Union, it is inappropriate to find a violation of Section 8(b)(2). In this case there is no evidence that the Respondent took any steps to cause the Employer to continue the deductions after the resignations. Accordingly, we reverse the judge's conclusion that the Respondent violated Section 8(b)(2) of the Act.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 788, Orlando, Florida, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Receiving, accepting, and retaining membership dues from any employee after the employee has resigned membership in the Union, where the terms of an executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation on the employee and where no valid union-security clause is in effect.''

2. Insert the following as paragraph 2(d) and reletter the subsequent paragraphs.

''(d) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT receive, accept, and retain membership dues deducted from the wages of employees of Martin Marietta Aerospace Corporation who have effectively resigned from union membership where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any dues obligation on the employees and where no valid union-security clause is in effect, and will notify the Employer and employees in writing.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse or refund to Jill Trolz, Dorothy Anderson, Lois Burks, Pamela R. England, Tanya L. Gray, Phyllis Johnson, Michael J. Kushi, and Cassandra S. Stevens the dues collected from them for the period following their valid resignations from the Union, with interest.

INTERNATIONAL UNION, UNITED AUTOMOBLIE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, LOCAL 788

Johnnie L. Mahan, Esq., for the General Counsel.
James D. Fagan, Jr. Esq., of Atlanta, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on February 6, 1989, at Orlando, Florida. The hearing was held pursuant to a consolidated complaint issued by the Regional Director for Region 12 of

[4] In *Lockheed* the Board left open the question whether the same analysis would apply in the context of a lawful union-security provision. here is no union-security clause requiring union membership here.

[5] The reference to Sec. 8(b)(2) is deleted from the remedy portion of the decision. We have conformed the Order more precisely to the violation found.

the National Labor Relations Board on January 18, 1989. The complaint is based on a charge in Case 12–CB–3162–1 filed by Charging Party Jill Trolz on September 29, 1988, a charge in Case 12–CB–3162–2 filed by Charging Party Michael J. Kushi on October 7, 1988, and a charge filed by Charging Party Tanya L. Gray on November 2, 1988. The complaint alleges that International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 788 (the Respondent or the Union) has violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by receiving, accepting, and retaining membership dues from the Charging Parties and the parties named in the complaint which have been deducted from their pay by Martin Marietta Aerospace Corporation (the Employer), pursuant to checkoff authorizations signed by the Charging Parties and other parties named in the complaint but after the Charging Parties and the other parties named in the complaint had resigned their membership in the Respondent Union. The complaint is joined by the answer of the Respondent Union as amended at the hearing wherein it denies the commission of the alleged violations of the Act and has asserted as affirmative defenses that the Charging Parties and other parties named in the complaint voluntarily signed valid and binding wage assignments to the Union and those assignments have not been revoked in accordance with the terms of the assignments and during appropriate times for revocation and therefore were valid at all times relevant herein and further that said Respondent Union was and is at all times relevant herein ready to perform all obligations on its part in regard to the wage assignments and therefore the named parties cannot unilaterally revoke their wage assignments to the Union.

On the entire record in this proceeding, which consists of complaint allegations, an answer as amended at the hearing and a stipulation entered into by the parties at the hearing and after consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, Respondent admits, and I find that at all times material the Employer is a corporation with an office and place of business located in Orlando, Florida, where it has been engaged in the design and fabrication of missiles, that annually in the course and conduct of its business operations it has sold and shipped from its Orlando, Florida facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Florida and has purchased and received at its Orlando, Florida facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Florida and is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

There was no testimony at the hearing. Thus, this record consists of the complaint allegations and admission in the answer as amended at the hearing and the stipulation of facts submitted by the parties at the hearing. The Respondent Union and the Employer have been parties to a collective-bargaining agreement effective from November 9, 1987, to November 1, 1990. On or about August 11, 1983, while employed by the Employer Charging Party Jill Trolz executed a checkoff authorization which provides as follows:

> In accordance with my rights under the National Labor Relations Act, and the laws of Florida I authorize the UAW (AFL–CIO) to serve as my collective bargaining representative and apply for membership.
>
> I authorize The Martin Marietta Company to deduct from my wages dues to the UAW and its Local No. 788 in the sum of $3.00 a month (or in the amount fixed by the Convention of the UAW), and my initiation fee, and remit them to the Financial Secretary of the Local Union. This authorization to the Company shall continue until the termination date of the applicable collective agreement or until one year from this date, whichever is sooner, and it shall automatically renew for successive periods of one year or for the period of each succeeding agreement, whichever period is shorter, unless I give written contrary notice to the Company and the Union by registered mail, return receipt requested, not more than 30 days and not less than 15 days prior to the expiration of such successive period.
>
> Dues and initiation fee deductions will not begin until sixty (60) days after my date of employment.

Identical above checkoff authorization forms were also signed by the following named employees while employed by the Employer:

Dorothy Anderson	February 2, 1984
Lois Burks	May 17, 1982
Pamela R. England	November 17, 1986
Charging Party Tanya L. Gray	September 19, 1986
Phyllis Johnson	August 4, 1986
Charging Party Michael J. Kushi	July 7, 1986
Cassandra S. Stevens	May 12, 1986

On or about August 12, 1988, Charging Party Trolz effectively resigned from membership in Respondent Union. On or about September 8, 1988, employees Dorothy Anderson, Lois Burks, Pamela R. England, Charging Party Tanya L. Gray, Phyllis Johnson, Charging Party Michael J. Kushi, and Cassandra S. Stevens effectively resigned from membership in Respondent Union. Since on or about August 12, 1988, Respondent received, accepted and retained membership dues from Charging Party Trolz' pay in reliance on the checkoff authorization set out above. Since on or about September 8, 1988, Respondent received, accepted, and retained membership dues from the wages of employees Dorothy Anderson, Lois Burks, Pamela England, Charging Party Gray, Phyllis Johnson, Charging Party Kushi, and Cassandra S. Stevens in

reliance on the checkoff authorizations set out above. In addition to the complaint allegations set out above, the parties entered into a stipulation read into the record whereby Respondent reserved its right to litigate or defend other unfair labor practice cases notwithstanding the stipulation entered into in this case, Respondent admitted the factual allegations of the complaint which have been set out above, and the parties agreed that the employees named in the complaint voluntarily signed valid and binding wage assignments in the form of checkoff authorizations to the Union and those assignments have not been revoked in accordance with the terms of the assignments and during appropriate times for revocation. It was further stipulated that the Respondent Union was at all times relevant to this case ready to render the benefits of membership in the Union and to perform with respect to the employees all obligations on its part in regard to the wage assignments. It was further stipulated and I take judicial notice that Florida is a right-to-work State. Based on the foregoing the General Counsel moved for a judgment on the pleadings at the hearing which motion was opposed by the Respondent Union.

Analysis

The General Counsel contends on the basis of the foregoing facts that the case of *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1984), is controlling in this case. In *Eagle Signal*, the Board said

> It is established Board law that a dues-checkoff authorization, or a wage assignment as it is called in this case, is a contract between an employee and his employer and that a resignation of union membership ordinarily does not revoke a checkoff authorization. However, a resignation will, by operation of law, revoke a checkoff authorization, even absent a revocation request, where the authorization itself makes payment of dues a quid pro quo for union membership. This is so whether or not the resignation is made during the period for revocation set forth in the authorization itself.

From the above the General Counsel contends that a determination must be made as to whether the terms of the written wage assignment executed by the discriminatees ''makes payment of dues quid pro quo for union membership'' and that if the payment of dues is quid pro quo for union membership, resignation from membership revokes the dues-checkoff authorization ''whether or not the resignation is made during the period for revocation in the authorization itself.'' The General Counsel further contends that the assignments executed by the discriminatees authorize Respondent to act as the collective-bargaining representative for the employees and also serves as an application for membership, noting that the wage assignment states it authorizes the Employer to deduct from the wages of the employees ''dues to the UAW and its Local 788 . . . and initiation fee, and to remit same to the Financial Secretary of the Local (788) union. . . .'' The General Counsel contends that the foregoing language makes clear that the moneys are being withheld as a quid pro quo for membership and that there is no basis to characterize the moneys as payment for any other obligation such as ''financial core'' payments or any other type of assessment. The General Counsel then contends that when the discriminatees validly resigned their union memberships, the agreements to have membership dues assigned to the Respondent, ceased to exist for purposes of dues checkoff. The General Counsel also relies on the Supreme Court's decision in *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), citing *Scofield v. NLRB*, 394 U.S. 423 (1969), and *Machinists Local 1414 (Neufield Porsche-Audi)*, 270 NLRB 1330, 1333 (1984), in which the Board's conclusion was upheld by the Court that a union's rule restricting the right of employees to resign is unlawful in that it ''impairs the policy of voluntary unionism,'' 473 U.S. at 107. The General Counsel further contends that the employees Section 7 right to resign from the union would be a hollow one if they nonetheless could be compelled to lend financial support to the union from which they have resigned, citing Board Member Johansen's note in *Postal Service*, 279 NLRB 40 fn. 5 (1986), that even if the Board construes the checkoff authorization of an employee who has resigned union membership to continue in effect ''the amount of dues owed is zero'' and therefore ''zero is the amount to be deducted and remitted.'' The General Counsel also cites *Distillery Workers Local 80 (Capital-Husting Co.)*, 235 NLRB 1264 (1978), wherein the Board found that the union violated Section 8(b)(2) of the Act by causing the employer to deduct full membership dues, rather than a lower nonmembership service fee obligation under the union-security clause after the employee resigned his union membership and attempted to revoke his checkoff authorization outside the ''escape period.'' The Board found in this case that the Union was entitled to the monthly service fee but was not entitled to full membership dues as he did not owe them following his resignation.

The Respondent contends that the employees voluntarily signed the checkoff authorizations and are bound by their terms citing *Chemical Workers Local 143 (Liderle Laboratories)*, 188 NLRB 705, 707 (1971); and *Frito-Lay, Inc*., 243 NLRB 137 (1979), wherein the Board held that resignation from membership in a union will not ordinarily revoke a dues-checkoff authorization. Respondent contends that *Frito-Lay* is applicable to the instant case as in that case the Board held, that because the employees had not revoked their authorizations during the escape periods provided for in the dues-checkoff authorizations, the Union and the Employer were justified in considering the authorizations as still valid. The Respondent also contends that Board decisions, departing from treating as valid authorizations after resignation by the signatory employees, have been rejected by the appellate courts citing *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987). Respondent also contends that the Supreme Court's decision in the *Pattern Makers* case is inapplicable as that case involved the use of monetary fines to burden a member's right to resign. The Respondent also cites *Seapak v. National Maritime Union*, 300 F.Supp. 1197, 1200 (S.D.Ga. 1969), affd. 423 F.2d 1229 (5th Cir. 1970); affd. 400 U.S. 985 (1971), contending that this case outlines the legislative history leading to Section 302(c)(4) of the Management Relations Act of 1947 showing that ''Congress acted with considered purpose in limiting the period of irrevocability to not more than a year,'' and that checkoff authorizations which are irrevocable for 1 year after date do not amount to compulsory unionism as to employees who wish to withdraw from unionism prior to that time.

My review of the arguments and cases cited by the General Counsel and the Respondent leads me to the conclusion that both sides have presented arguments meriting consideration. Thus as the General Counsel contends if the employees are compelled to continue to pay union dues following their resignation from the Union, their right to resign appears to be a hollow one. As the Respondent contends, the employees voluntarily entered into the wage assignments which contain escape periods set out by their terms for a reasonable period of 1 year subject to the right to revoke them during the escape period and this period was deemed reasonable by Congress and is necessary to ensure the Union stability of income to enable it to function, particularly in right-to-work States wherein all checkoff provisions would be revocable at will under the General Counsel's theory.

However, as I review the cases and the Board's recent pronouncement in the *Eagle Signal* and in light of *Pattern Makers* and *Neufield Porsche-Audi*, I find that the Board and the Supreme Court have decided that the employees' rights under Section 7 of the Act to engage in union activities or to refrain from doing so are paramount in these cases and determinative in deciding them as the logical consequences flowing from the right to resign such as the corresponding right to no longer pay union dues must obtain if the Section 7 right to resign is to be a meaningful one. Accordingly I find that the Board's position in *Eagle Signal* which has support in the Supreme Court's decision of *Pattern Makers* must be followed in this case. I accordingly conclude that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by receiving, accepting, and retaining membership dues deducted from the wages of the above-named employees after they had effectively resigned from the Union as the language of the checkoff authorizations clearly demonstrates that the moneys withheld thereunder were and are withheld as a quid pro quo for membership in the Union. *Food & Commercial Workers (Hudson Foods)*, 282 NLRB 1413 (1987).

CONCLUSIONS OF LAW

1. Martin Marietta Aerospace Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent by receiving, accepting, and retaining membership dues from the pay of its former member Jill Trolz after the effective date of her resignation from membership in Respondent on August 12, 1988, and of its former members Dorothy Anderson, Lois Burks, Pamela R. England, Tanya L. Gray, Phyllis Johnson, Michael J. Kushi, and Cassandra S. Stevens on September 8, 1988, has violated Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative actions designed to promote the policies of the Act including the posting of the appropriate notice. Respondent shall be ordered to notify the Employer and the discriminatees in writing that the employees have resigned their membership from the Respondent and that their authorization cards have been revoked and that no additional deductions should be made from their earnings pursuant to the authorization cards. Respondent shall also reimburse the aforesaid employees for all dues withheld from their earnings after the date of their resignation from the Union with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 788, Orlando, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Receiving, accepting, and retaining membership dues from employees who resign from union membership.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Employer, Martin Marietta Aerospace Corporation, that the above-named employees have resigned their membership in the Union and that their wage assignments have accordingly been effectively revoked and that no additional moneys shall be withheld from their earnings pursuant to the terms of the revoked wage assignments and notify the employees in writing thereof.

(b) Make whole the above-named employees for any moneys unlawfully held from their wages as found here after the effective date of their resignations from the Union with interest.

(c) Post at its business office and meeting hall the attached notice marked ''Appendix.''[3] Copies of the notice on forms provided by the Regional Director for Region 12 after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director writing within 20 days from the date of this Order what steps Respondent has taken to comply.

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[1] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''